



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/166945

PRELIMINARY RECITALS

Pursuant to a petition filed June 25, 2015, under Wis. Stat. §49.45(5), and Wis. Admin. Code §HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability/Office of the Inspector General (OIG) in regard to Medical Assistance (MA), a telephonic hearing was held on September 15, 2015.

The issue for determination is whether the OIG correctly denied petitioner's prior authorization (PA) request because it did not support the medical necessity for the requested speech language therapy (SLT) services.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By written submittal of: Laura Triller

Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Winnebago County. At the time of the PA request he was 3 years old and certified as eligible for MA.
2. Petitioner is diagnosed with cerebral palsy, dysphagia and congenital diplegia.
3. On March 23, 2015 the petitioner's private Speech Language Therapist at St. Elizabeth Hospital submitted a PA request to the OIG for 20 sessions of swallowing/feeding/oral motor therapy (procedure code [REDACTED]), once weekly, beginning March 20, 2015.
4. Petitioner had a PA approved for SLT in 2013 for procedure code [REDACTED] and was documented as meeting those goals after therapy.
5. On June 2, 2015 the OIG issued a notice to petitioner denying the PA request because it concluded that the SLT regimen requested was not sufficiently documented to be medically necessary under Wisconsin's MA rules.

DISCUSSION

Speech and language therapy is an MA-covered service, subject to prior authorization after the first 35 treatment days. Wis. Admin. Code, §DHS 107.18(2). In determining whether to approve such a therapy request, the OIG employs the generic prior authorization criteria found at §DHS 107.02(3)(e). Those criteria include the requirements that a service be medical necessary, appropriate, and an effective use of available services. Included in the definition of "medically necessary" at §DHS 101.03(96m) are the requirements that services not be duplicative of other services, and that services be cost effective when compared to alternative services accessible to the recipient. It is up to the provider to justify the provision of the service. See Wis. Admin. Code §DHS 107.02(3)(d)6.

Wis. Admin. Code §DHS 107.02(2)(b) states that the Division may reject payment for a service if the services are determined to be medically unnecessary, inappropriate, in excess of accepted standards of reasonableness or less costly alternative services, or of excessive frequency or duration. "Medically necessary" is a defined term at Wis. Admin. Code § DHS 101.03(96m).

"Medically necessary" means a medical assistance service under [Chapter DHS 107](#) that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
 1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
 2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider and the setting in which the service is provided;
 3. Is appropriate with regard to generally accepted standards of medical practice;
 4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
 5. Is of proven medical value or usefulness and, consistent with [s. DHS 107.035](#), is not experimental in nature;
 6. Is not duplicative with respect to other services being provided to the recipient;

7. Is not solely for the convenience of the recipient, the recipient's family or a provider;
8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Admin. Code §DHS 101.03(96m).

To get additional SLT after the first 35 days, the person must show continued improvement in oral motor ability and/or communication. SLT extensions will be denied if: (1) “the recipient has shown no progress toward meeting or maintaining established and measurable treatment goals over a 6-month period,” and (4) “the recipient’s abilities are functional for the person’s present way of life.” §DHS 107.18(3)(e)1 and 4. It is up to the provider to justify the provision of the service. §DHS 107.02(3)(d)6.

When the OIG first received the PA request here, it was returned to the private SLT requesting that the provider submit justification for continued services. The provider replied that petitioner made functional gains with oral motor skills and feeding with the previous PA in 2013. The provider also explained how petitioner’s parents are able to feed him currently with supervision and specific diet. The provider did not explain how or why the previous therapy’s skills were lost, or why this requested therapy in 2015 would result in something different.

I must agree with the OIG that it follows that if a patient is not maintaining established and measurable treatment goals after receiving therapy, there is not a medical necessity for more ineffectual therapy. Again, it is the provider’s duty to justify the provision of the services. As an MA-certified provider, providers who request the MA program to reimburse for their services are required, by law, to completely and accurately complete the prior authorizations which they submit. Not every medical provider can submit a PA to the MA program to request reimbursement. Only those providers who have been certified to provide MA-reimbursable services are allowed to submit a PA. One of the reasons these medical providers are “certified” is to assure they are kept up to date on changes in the MA program and the prior authorization process. MA-certified providers are expected to know the rules and policies controlling the prior authorization process and the completion of the prior authorization forms.

Petitioner’s mother, who clearly wants the best for her son, appeared at hearing but could not provide much in the way of testimony or documentation to support a different finding - appearing essentially at the mercy of a provider who is far more familiar with navigating the complexities of completing a prior authorization request.

Based upon the preponderance of the evidence in this record, I can only conclude that the provider has not justified the services requested. The provider can always submit a new PA with adequate documentation.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division’s hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

CONCLUSIONS OF LAW

The OIG correctly denied petitioner's PA request because it did not support the medical necessity for the requested SLT services.

THEREFORE, it is

ORDERED

The petition for review herein is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

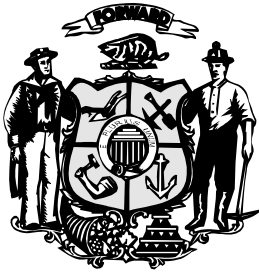
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 2nd day of October, 2015

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on October 2, 2015.

Division of Health Care Access and Accountability